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JAN 13 1994

HOWARD HANSON
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN

10 CHURCH OF SCIENTOLOGY INTERNATIONAL,))
a California not-for-profit))
11 religious corporation,))
12 Plaintiff,))
13 vs.))
14 GERALD ARMSTRONG; MICHAEL WALTON;))
THE GERALD ARMSTRONG CORPORATION,))
15 a California for-profit))
corporation; DOES 1 through 100,))
16 inclusive,))
17 Defendants.))
18

No. 157 680
ARMSTRONG CORPORATION'S
OPPOSITION TO MOTION TO
COMPEL DISCOVERY
Date: January 21, 1994
Time: 9:00 a.m.
Dept: 1
Trial Date: 9/29/94

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19 I. INTRODUCTION

20 This response is directed at Scientology's motion to compel
21 concerning its first request for production of documents from The
22 Gerlad Armstrong Corporation.

23 The first cause of action in plaintiff's complaint to set
24 aside fraudulent transfers seeks to void the transfer of certain
25 real property in San Anselmo that Gerald Armstrong ("Armstrong")
26 transferred to Michael Walton in 1990.

27 The second cause of action alleges that Armstrong
28 fraudulently transferred \$41,500.00 and \$1,000,000.00 in stock (a

1 value whose basis in fact solely lies in Armstrong's valuation
2 that has no reference to any other benchmark) in The Gerald
3 Armstrong Corporation ("TGAC"). The second cause of action also
4 asks the Court to void such transfers to the extent required to
5 satisfy the judgment that Scientology hopes to obtain. ^{1/}

6 **II. STATEMENT OF FACTS** ^{2/}

7 TGAC has factually responded to Requests 1, 2, 3, 4, 5, 6, 7,
8 8, 9, 10, 11, 12, 22, and 23, rendering any dispute as to those
9 requests moot. Thus, this opposition is directed at requests 13
10 through 21.

11 Plaintiff seeks to discover the identities of all persons
12 having anything to do with TGAC's finances (No. 13), the financial
13 condition of TGAC (No. 14), the identities of TGAC's bank
14 accounts (No. 15), any documents referring to stock offerings made
15 by TGAC (No. 16), all documents relating to any transfer of shares
16 in TGAC by anyone (No. 17), all documents relating to any transfer
17 of assets from Armstrong to TGAC (No. 18), any loans made to by
18 any person (No. 19), all documents showing the name of employees
19 who worked for TGAC (No. 20), all documents showing any payments
20 made to TGAC by Armstrong (No. 21), and all documents showing any
21 payments made to TGAC by Michael Walton (No. 22). Even though

22 ¹ As previously noted in this litigation, Scientology has
23 two lawsuits pending against Armstrong and TGAC in Los Angeles
24 Superior Court. Both actions are the subject of a stay that was
25 issued by Judge Horowitz in that Court almost one year ago. Said
26 stay will be lifted once the Second District Court of Appeal
27 issues its decision on Armstrong's appeal of the preliminary
28 injunction issued by Judge Sohigian on May 28, 1992.

27 ² TGAC also incorproates by reference the statement of
28 facts set forth in Gerald Armstrong's opposition to the motion to
compel directed to Gerald Armstrong (second request for
production) and Michael Walton (first request for production.)

1 TGAC was not incorporated until late 1987, each request extends to
2 January 1, 1987.

3 TGAC objects to such disclosure because it is not necessary
4 to the litigation. Armstrong has admitted that he gave away his
5 assets, those enumerated in the first and second causes of action,
6 to Michael Walton, Michael Douglas and Lorien Phippeny.
7 Therefore, TGAC has nothing to do with these cause of action.

8 **III. THE DISCOVERY SOUGHT BY REQUESTS 13 THORUGH 22**
9 **SHOULD BE DENIED BECAUSE IT IS PRIVATE, AND**
10 **NOT NECESSARY TO THE DETERMINATION OF THE LAWSUIT**

11 TGAC has agreed to and by he hearing will have produced all
12 documents that are relevant to the subject matter of this lawsuit.
13 It refuses to allow Scientology, to generally comb through its
14 corporate financial information. Such information is protected by
15 the constitutionally fundamental right of privacy in two regards.
16 One is financial and the other is associational. Since disclosure
17 of TGAC's financial information in a general sense is not required
18 in order to sustain or defeat Scientology's first and second
19 causes of action, it need not disclose such general information.

20 Moreover, Scientology has long regarded TGAC's owner, Gerald
21 Armstrong as a "suppressive person" who is subject to its
22 malicious "fair game" policy "which permits a suppressive person
23 to be 'tricked, sued, or lied to or destroyed . . . [or] deprived
24 or property or injured by any means by any Scientologist.'" (Church of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060,
25 1067.) ^{3/} Thus, the risk of abuse of whatever TGAC's financial

26 ³ In executing the "fair game" policy on Armstrong,
27 Scientology has, inter alia, Armstrong was assaulted by one of
28 Scientology's investigators, then assaulted by an automobile
driven by such an investigator, then attempted to involve

1 information that Scientology is able to obtain is dramatically
2 increased.

3 **A. The Discovery Of Financial Information**
4 **Must Be Narrowly Circumscribed In Order**
5 **To Maximum Protection To TGAC's Privacy**

6 A corporation is entitled to the right of privacy. (H & M
7 Assoc. v. City of El Centro (1980) 109 Cal.App.3d 399, 410-411.)

8 Article 1, section 1 of the California Constitution declares
9 that the right to privacy is inalienable. It is a "fundamental
10 interest" that is essential to the rights "guaranteed by the
11 First, Third, Fourth, Fifth and Ninth Amendments to the U.S.
12 Constitution." (City of Santa Barbara v. Adamson (1980) 27 Cal.3d
13 123, 130.) The right to privacy is not, however, absolute; it may
14 be abridged when, but only when, there is a compelling and
15 opposing state interest. (Board of Trustees v. Superior Court
16 (1981) 119 Cal.app.3d 516, 525.) Of course, state interest, lies
17 in "facilitating the ascertainment of truth in legal proceedings."
18 (Britt v. Superior Court (1978) 20 Cal.3d 844, 857.)

19 When the right to disclosure of information conflicts with
20 the constitutional right to privacy, there should be a "careful
21 balancing" of the "compelling public need" for discovery, against
22 the "fundamental right of privacy." (City and County of San
23 Francisco v. Superior Court (1981) 125 Cal.App.3d 879, 823.) Even
24 where the balance, because of a "'compelling state purpose,'"
25 weighs in favor of disclosure of private information, the scope of
26 such disclosure will be narrowly circumscribed; such an invasion
27 of the right of privacy "must be drawn with narrow specificity."

28 _____
29 Armstrong in an auto accident on the freeway, and an investigator
30 attempted to run Armstrong off the road. (Ibid.)

1 (Ibid. quoting Britt, supra., 20 Cal.3d at 856.)

2 Before the Court orders disclosure, it must carefully balance
3 the compelling public need for discovery against the fundamental
4 right of privacy. (City of Santa Barbara v. Adamson, supra., 27
5 Cal.3d at 130.) It is essential "that the compelled need for
6 disclosure be narrowly drawn to assure maximum protection of the
7 constitutional interests at stake." (Britt v. Superior Court,
8 supra., 20 Cal.3d at 859.) The possibility that irrelevant
9 information might lead to relevant information is not enough.
10 "[I]nquiry into one's private affairs will not be constitutionally
11 justified simply because inadmissible, and irrelevant, matter
12 sought to be discovered might lead to other, and relevant
13 evidence." (Board of Trustees, supra., 119 Cal.App.3d at 525.)
14 "When compelled disclosure intrudes on constitutionally protected
15 areas, it cannot be justified solely on the ground that it may
16 lead to relevant information." (Morales v. Superior Court 99
17 Cal.App.3d 283, 289; see also Shelton v. Tucker (1960) 364 U.S.
18 479, 483-485; Fults v. Superior Court (1979) 88 Cal.App.3d 899,
19 904.) "... [E]ven when discovery of private information is found
20 directly relevant to the issues of ongoing litigation, it will not
21 be automatically allowed." (Board of Trustees, supra., 119
22 Cal.App.3d at 525.) "This constitutional principle denies the
23 validity of the dragnet in order that fundamental liberties are
24 not subordinated to mere convenience... Simple speculation that an
25 answer may uncover something helpful is not enough." (Fults v.
26 Superior Court, supra., 88 Cal.App.3d at 904-905.) "[A]n adequate
27 foundation for inquiry must be laid before proceeding in such a
28 manner as will substantially intrude upon . . . constitutionally

1 activities." (Gibson v. Florida Legislative Comm. (1963) 372 U.S.
2 539, 557.)

3 The right to privacy extends to one's confidential financial
4 affairs. (Valley Bank of Nevada v. Superior Court (1975) 15
5 Cal.3d 652, 656.) Finally, where, as in the case at bar, "the
6 financial information goes to the heart of the cause of action
7 itself, a litigant should not be denied access so easily." (GT,
8 Inc. v. Superior Court (1984) 151 Cal.App.3d 748, 754 [discussing
9 disclosure of financial data in the context of punitive damages
10 discovery].) Thus, where the documents a party seeks are
11 "fundamental to his case", disclosure should be ordered.
12 (Rawnsley v. Superior Court (1986) 183 Cal.App.3d 86, 91.)

13 Armstrong has admitted that he possessed and owned the house
14 on Fawn Drive, \$41,500.00 and the stock in TGAC which he gave to
15 Michael Walton, Michael Douglas and Kima Douglas. (Armstrong
16 Declaration at ¶ 12.) Therefore, requests for production pertinent
17 to the transfers of such property are not properly directed at
18 TGAC because they are not relevant.

19 Further discovery also should not be ordered because TGAC has
20 agreed to produce all documents that are fundamental to
21 Scientology's case, but objects to the wholesale disclosure of all
22 its financial records as unnecessary to a fair resolution of the
23 litigation.

24 Finally, TGAC is an organization which promotes both a peace
25 and philosophy. (Armstrong Declaration at ¶¶). The discovery
26 that Scientology seeks from TGAC includes documents that will
27 disclose the identity of some of its stockholders and members.
28 This would violate the right to associational privacy. The right

1 of associational privacy was articulated in NAACP v. Alabama
2 (1958) 357 U.S. 449, 462. In Gibson v. Florida Legislative Comm.
3 (1963) 372 U.S. 539, 556, the Supreme Court declared that "all
4 legitimate organizations are the beneficiaries of these [privacy
5 of association] protections." The right to associate for the
6 advancement of beliefs and speech is proected. (Pacific-Union
7 Club v. Superior Court (1991) 232 Cal.App.3d 60, 71-78.) Indeed,
8 the "[f]orms of association that have been protected are not
9 [necessarily] political in the customary sense but pertain to the
10 social, legal, and economic benefit of the members. City of
11 Carmel-by-the-Sea v. Young (1970) 2 Cal.3d 259, 267; Church of
12 Hakeem, Inc. v. Superior Court (1980) 110 Cal.App.3d 384, 387-388"
13 as quoted in Olympic Club v. Superior Court (1991) 229 Cal.App.3d
14 358, 361.) TGAC must be given protection on this basis as well.

15 In light of the fact that Gerald Armstrong has admitted the
16 fact that he owned the assets and gave such assets to those whom
17 he has identified, there is no need for Scientology to examine
18 either the finances or stoackholders of TGAC any further.

19 **B. Since TGAC Has Agreed To Disclose**
20 **All Documents Directly Relevant To The**
21 **Complaint, Its Right To Privacy Should**
Prevent The Disclosure Of Generalized
Financial Information

22 TGAC has agreed to disclose all documents that it possesses
23 which are relevant to Scientology's accusation regarding the
24 alleged fraudulent conveyence of the interest in the house on Fawn
25 Drive (first cause of action) and \$41,500.00 and \$1,000,000.00
26 (second cause of action). What Scientology wants in addition to
27 this all documents having to do with the financial condition, bank
28 accounts, and financial advisors of both Armstrong and his

1 corporation. Such generalized disclosure is clearly unnecessary
2 and unwarranted.

3 ... [P]rotection is given to sensitive
4 information which people may wish to keep
5 confidential, such as their financial dealings
6 (see e.g. Valley Bank of Nevada v. Superior
7 Court (1975) 15 Cal.3d 652...) and assets (see
8 e.g., Richards v. Superior Court (1978) 86
9 Cal.App.3d 265...) "Where objection is made
10 to discovery of such sensitive information in
11 the trial court, the court must carefully
12 weigh the competing factors in fashioning an
13 order, considering: '... the purpose of the
14 information sought, the effect that disclosure
15 will have on the parties and on the trial, the
16 nature of the objections urged by the party
17 resisting disclosure, and ability of the court
18 to make an alternative order which may grant
19 partial disclosure, disclosure in another
20 form, or disclosure only in the event that the
21 party seeking the information undertakes
22 certain specified burdens which appear just
23 under the circumstances. [Citations omitted.]
24 Where the court abuses its discretion in
25 applying this balancing test and fashioning
26 its order, relief is available by writ of
27 mandate.

16 (Hofmann Corp. v. Superior Court (Smaystrla) (1985) 172 Cal.App.3d
17 357, 362.)

18 Since Armstrong has agreed to disclose the documents that are
19 pertinent to the subject matter of the complaint, the purpose of
20 the remaining requests, at best, is simply to comb through
21 Armstrong's finances in the hopes that something will turn up. At
22 worst, the purpose would be to use the information that would be
23 found as a result of Scientology's rummaging around in Armstrong's
24 financial affairs to hurt Armstrong in further application of the
25 fair game policy. Armstrong has agreed to be reasonable and
26 produce that which is relevant to the lawsuit. He is not willing,
27 however, to give Scientology carte blanche to make his life as
28 miserable as it can. Such is not a legitimate purpose of

1 discovery.

2 Armstrong has recognized his duty as a defendant to produce
3 relevant documents and has agreed to do so. In light of this, the
4 scope of disclosure must be "narrowly circumscribed" and "drawn
5 with narrow specificity . . . only to the extent necessary for a
6 fair resolution of the lawsuit." (Moskowitz v. Los Angeles County
7 Superior Court (1982) 137 Cal.App.3d 313, 316.) General financial
8 discovery should be prohibited.

9 **C. TGAC Should Be Accorded Maximum Protection**
10 **In Order To Prevent Discovery From Being Used**
11 **As An Implement Of The Fair Game Policy**

12 As noted above, Gerald Armstrong, the primary person behind
13 TGAC, has been designated a "suppressive person" who by virtue of
14 said label is subject to the "fair game" policy. One tactic of
15 implementing the fair game policy is the use of litigation.

16 Scientology embraces the use of litigation to harass its
17 opponents. Its founder, L. Ron Hubbard, has described this
18 practice as follows:

19 The purpose of the suit is to harass and discourage rather
20 than to win. [¶] The law can be used very easily to harass,
21 and enough harassment on somebody who is simply on the thin
22 edge anyway...will generally be sufficient to cause his
23 professional decease. If possible, of course, ruin him
24 utterly. ⁴/

25 ⁴ From L. Ron Hubbard, The Technical Bulletins of
26 Dianetics and Scientology, Volume II, p. 157. A copy of the
27 relevant portion of this document is attached as Exhibit A to, and
28 is authenticated by, Armstrong's Declaration submitted herewith.

29 Top Scientology official Jane Kember, in an internal
30 Scientology document, explained that Scientology legal strategy in
31 the U.S. is to use litigation as a financial club:
32 "The button used in effecting settlement is purely financial. In
33 other words, it is more costly to continue the legal action than
34 to settle in some fashion. ... [¶] Therefore, it is imperative
35 that legal US Dev-T his opponents and their lawyers with
36 correspondence (a lawyer's letter costs approx \$50), phone calls
37 (time costs), interrogatories, depositions and whatever else legal

1 Armstrong is still considered to be fair game. (Exhibit C to
2 Armstrong Declaration.)

3 In light of Scientology's history of attacking Armstrong, and
4 desire to rummage through his financial affairs, it is
5 respectfully submitted that the Court should give great weight to
6 the constitutional directive that disclosure be ordered only with
7 narrow specificity.

8 **D. If There Is Any Further Disclosure,**
9 **It Should Be Subject To A Protective Order**

10 Most of the case law which pertains to the discovery of
11 financial information is found in the context of a claim for
12 punitive damages. Nonetheless, the principles set forth in that
13 context are also applicable to the circumstances of the case at
14 bar.

15 Discovery seeking financial information by
16 reason of a claim for punitive damages is one
17 classic instance of the manner in which civil
18 discovery is used to achieve a litigation
19 advantage never contemplated when the
20 methodology was introduced into pretrial
21 procedure [T]here is usually the
22 potential that untoward disclosure of the
23 information obtained may in some way or other
24 react adversely against the disclosing party
25 for reasons totally unrelated to the lawsuit.
The possibilities run all the way from greater
exposure to the not so gentle solicitations of
some charitable organization to the
possibility of damage to the discloser in the
competitive business arena. ... [¶] ... It
seems a rare instance indeed that the
potential of disclosure for purposes unrelated
to the lawsuit or to persons other than
counsel and their representatives serves any

25 _____
26 can mock up. [¶] One of the bright spots of US legal is that
27 even if you lose you don't pay your opponent for his lawyers
28 fees." A copy of the document containing this statement is
attached as Exhibit B to, and is authenticated by, Armstrong's
Declaration. The phrase "Dev-T" is a term which Scientology uses
to mean to cause someone to do unnecessary work. Id.

1 purpose except to give a tactical edge to the
2 party who has obtained discovery of the
3 information by allowing that party the benefit
 of pressure in settlement negotiations by
 threat or implication of disclosure."

4 (Richards v. Superior Court, supra., 86 Cal.App.3d at 271-272.)

5 The above stated principle does not even comprehend the
6 possibility that is presented by the "fair game" policy: that
7 litigation would be used for vindictive and destructive purposes.

8 Scientology counsel, Laurie Bartilson, is a Scientologist.
9 (Declaration of Ford Greene) Therefore, she is subject to the
10 "ethics" practices of Scientology and is subject to being jailed
11 in Scientology's prison, the Rehabilitation Project Force ("RPF").

12 ⁵/ Since Armstrong has been labelled as "suppressive person" and
13 is subject to "fair game," which allows Bartilson to "lie" in
14 order to harm Armstrong, her word that she would not disclose any
15 financial information cannot be trusted.

16 Therefore, should any further disclosure be ordered,
17 disclosure should be limited to Mr. Wilson who should be ordered
18 not to disclose the same to his client, to Ms. Bartilson or to any
19 of his client's agents. This must be done in order to protect
20 Armstrong from such disclosure being used for a retributive
21 purpose in application of the "fair game" policy. (Id. 212
22 Cal.App.3d at 888-889.)

23 Finally, Armstrong requests that any further production
24 ordered should be made only after an in camera review by the
25 Court.

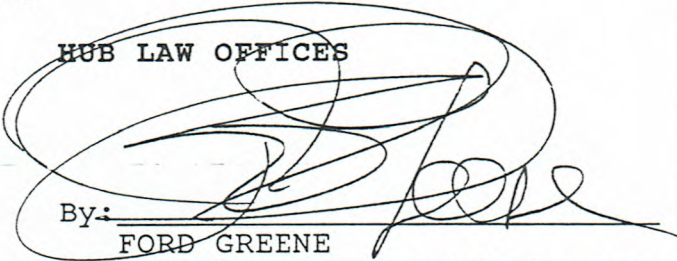
26
27 ⁵ See also Wollersheim v. Church of Scientology (1989)
28 212 Cal.App.3d 872, 880-881, 260 Cal.Rptr. 331, affirmed on these
 matters (1992) 3 Cal.App.4th 1290, 6 Cal.Rptr.2d 532 fn.1.

1 **IV. CONCLUSION**

2 Base upon the foregoing points and authorities, The Gerald
3 Armstrong Corporation respectfully submits that it has completely
4 and fairly complied with all discovery and that Scientology's
5 motion to compel should be denied.

6 DATED: January 13, 1994

HUB LAW OFFICES



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9 By: _____
10 FORD GREENE
11 Attorney for Defendants and
12 GERALD ARMSTRONG
13 and THE GERALD ARMSTRONG
14 CORPORATION
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PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: ARMSTRONG COPRORATION'S OPPOSITION TO MOTION TO COMPEL DISCOVERY

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

MICHAEL WALTON, ESQ.
707 Fawn Drive
San Anselmo, CA 94960

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
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6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

- (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.
- (Personal) I caused said papers to be personally service on the office of opposing counsel.
- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: January 13, 1994

